Ontario Government’s Healthcare Reform Legislation, Bill 74, The People's Health Care Act, 2019

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Overview

On February 26, 2019, Minister Christine Elliott unveiled the Government of Ontario’s anticipated flagship legislation on healthcare reform.Bill 74, known by its short title The People's Health Care Act, 2019, is drafted as an omnibus Bill, which means that it will impact various Acts. Many of the amendments to other Acts are consequential to reflect the creation of the new province-wide agency and the eventual dissolution of local health integration networks (LHINs).The Bill will establish a new province-wide super agency known as Ontario Health (Agency) and enable the creation of integrated care delivery systems, which the Ministry of Health and Long-Term Care (Ministry) is referring to as Ontario Health Teams.For the purposes of this bulletin, we focus on Schedule 1 of the Bill, the proposed Connecting Care Act, 2019, which creates the Agency, and provides for its powers and the powers of the Minister, and enables the establishment of Ontario Health Teams.

Recognition of Integrated Care Delivery Systems (ICDS or Ontario Health Teams)

The Bill permits the Minister to designate a person or group of persons or entities as an ICDS if the person, entity or group meets any prescribed conditions or requirements and has the ability to deliver, in an integrated and co-ordinated manner, at least three of the following services:

- hospital;
- primary care;
- mental health or addictions;
- home care or community services;
- long-term care home;
- palliative care; and

- other prescribed health care service or non-health service that supports the provision of health care services.

As noted above, the Ministry is referring to ICDSs as Ontario Health Teams and has indicated that they will be phased in over time with some early adopters and that eventually perhaps as many as 30-50 will be designated. An ICDS is treated as if it is a health service provider for purposes of the Bill (i.e., including with respect to funding, being subject to Minister's directions, integration orders, appointments of investigators or supervisors, obligations to engage and seek opportunities to integrate). It is interesting to note that no form of governance or corporate structure is prescribed and, subject to any regulations that may be issued, it would appear that it is open to health service providers to determine the governance and legal structure of an ICDS.

Future of the Local Health System Integration Networks

The Bill gives the Agency many of the powers currently held by the LHINs. The Bill provides for the transfer of the operations of the LHINs to the Agency or to a health service provider or an ICDS, and the eventual repeal of the Local Health System Integration Act, 2006 (LHSIA).

Future of Other Government Agencies

The Bill also enables the transfer, by Ministerial order, of the operations of the following agencies to the Agency or to a health service provider or an ICDS:

- Cancer Care Ontario;
- eHealth Ontario;
- HealthForceOntario Marketing and Recruitment Agency;
- Health Shared Services Ontario;
- Ontario Health Quality Council; and
- Trillium Gift of Life Network.

We note that the Bill enables, by regulation, other entities to be added to the list of agencies to be transferred. While the Bill, as presently drafted, will enable the transfer of the above agencies to the Agency, to a health service provider or to an ICDS, it is our understanding that it is anticipated that such agencies will, in fact, be transferred to the Agency.

The Agency

(a) Governance Structure and Relationship to the Ministry

The Agency is a crown agency and from a governance structure and corporate authority perspective is very similar to the LHINs.

The Agency will have a board of up to 15 directors and, like the LHINs, the directors, the Chair and the Vice Chair will be appointed by the Lieutenant Governor in Council (LGIC). The board will hire the CEO, who shall not be a director, and will set the

remuneration of the CEO within the ranges established by the Minister.

There is no requirement for meetings of the Agency board to be open to the public.

The LHINs have a number of powers that can not be delegated to employees and that have to be exercised by the full board (including issuing directives, appointing supervisors and issuing integration decisions). Under the Bill, the powers of the Agency do not include issuing directives or appointing supervisors. Only the power to appoint inspectors may not be delegated; however, other non-delegable powers may be added by regulation.

The Minister and the Agency are required to enter into an accountability agreement, and the Agency is subject to accountability and reporting to the Minister in much the same way as are the LHINs.

Some powers of the Agency may only be exercised if approved by the Minister or the LGIC.

(b) Objects

As currently contemplated by the Bill, the Agency's objects are more succinctly set out than those assigned to the LHINs but include many of the same concepts. The objects of the Agency are:

1. to implement the health system strategies developed by the Ministry;
2. to manage health service needs across Ontario consistent with the Ministry's health system strategies to ensure the quality and sustainability of the Ontario health system through:
   health system operational management and co-ordination;
   health system performance measurement and management, evaluation, monitoring and reporting;
   health system quality improvement;
   clinical and quality standards development for patient care and safety;
   knowledge dissemination;
   patient engagement and patient relations;
   digital health, information technology and data management services, and support of health care practitioner recruitment and retention;
3. to plan, co-ordinate, undertake and support activities related to tissue donation and transplantation in accordance with the Trillium Gift of Life Network Act;
4. to support the patient ombudsman in carrying out their functions in accordance with the Excellent Care for All Act, 2010;
5. to support or provide supply chain management services to health service providers and related organizations;
6. to provide advice, recommendations and information to the Minister and other participants in the Ontario health care system in respect of issues related to health care that the Minister may specify;
7. to promote health service integration to enable appropriate, co-ordinated and effective health service delivery; and
8. any other prescribed objects.
   Some of these objects reflect the role of the Agency in taking over the operations of the agencies identified above. Some of the specific and detailed objects of the LHINs that have not been carried forward (such as community engagement)

remain in the Bill as powers of the Agency. There is, however, no specific reference to the Agency's role, if any, in system planning.

It remains to be seen whether some of the other objects formerly ascribed to the LHINs, such as the promotion of health equity and the development and implementation of health promotion strategies, will be added before the Bill becomes law.

(c) Powers of the Agency

Many of the LHINs' powers will become powers of the Minister; however, the Agency will have the power to appoint investigators, enter into funding agreements and require reporting from, and exercise oversight of, health service providers and ICDSs.

a. Investigators

Where it is considered by the Agency to be in the public interest to do so, the Agency may appoint an investigator to investigate and report on: (a) the quality of the management of a health service provider or ICDS; (b) the quality of the care and treatment of persons by a health service provider or an ICDS; or (c) any other matter relating to a health service provider or ICDS.

An investigator has broad powers, including the ability to enter premises without a warrant and to require the production of records. An investigator's report is delivered to the Agency and shall be made available to the public.

The Agency may not appoint an investigator of a licensee under the LongtTerm Care Homes Act, 2007 or in respect of the services of such a licensee that is part of an ICDS nor may the Agency appoint an investigator of a public hospital or of an ICDS that includes a public hospital however in the case of a public hospital or a ICDS that includes a public hospital, the LGIC may do so on the advice of the Minister.

b. Audit and Reports

Under the Bill, the Agency is given the power to direct, at any time, that any person or entity receiving funding from the Agency engage an auditor to audit its accounts and financial statements, or engage or permit an operational review or peer review of its activities. The Agency also has the power to require a funded person or entity to provide plans, reports, financial statements, including audited financial statements, and other information. These provisions are similar to those in LHSIA.

c. Service Accountability Agreements

Under the Bill, where the Agency proposes to fund a health service provider, ICDS or other person or entity in respect of non-health services that support the provision of health care, the funding recipient must enter into a service accountability agreement (SAA) with the Agency.

The Bill provides for a process of notice and negotiation of a SAA but reserves to the Agency the authority to eventually unilaterally impose the terms and conditions of the SAA. In particular, if the parties are unable to negotiate the terms and conditions of the SAA within 90 days, the Agency may deliver a notice of offer setting out the terms of the proposed SAA. The Minister is to be given notice of the offer. If the parties have not

reached an agreement within a further 60 days, then the terms set out in the notice of offer shall be deemed to be the SAA.

The process outlined above will also apply to an amendment to a SAA. One new provision that was not in LHSIA enables the Agency and the funded entity to agree on an alternative process for reaching agreement on a SAA.

The process in LHSIA to enter into a SAA also contemplates an initial 90-day negotiation period to be followed by a further 60-day period; however, the LHSIA process then provides for additional periods of negotiation first involving the respective CEOs and then the respective board Chairs before the notice of offer of the terms of the SAA can be issued. Following the notice of offer in LHSIA, there is yet another 30-day period during which the funding recipient can dispute the terms, failing which they are deemed to accept them. If the terms are disputed, then the LHIN has to consider the submissions of the health service provider and provide notice to the Minister before the LHIN can deem the terms and conditions of the SAA.

The Bill specifically requires that no agreements entered into by the Agency or a funded entity, including SAAs, can restrict or prevent an individual from receiving services based on the geographic area in Ontario in which the individual resides. However, agreements entered into under the Home Care and Community Services Act, 1994 that require a health service provider or ICDS to deliver services in a specified geographic area in Ontario are exempted from this prohibition.

The Minister

The Bill allocates certain powers to the Minister, including the power to designate an ICDS, issue directives, appoint an investigator, appoint a supervisor over a health service provider or an ICDS, and to order integration.

a. Directives of the Minister

Where it is in the public interest to do so, the Minister may issue a directive to the Agency or any person that receives funding from the Agency under a SAA. Directives issued by the Minister appear to replace Ministerial-issued provincial standards and LHIN-issued operational and policy directives under LHSIA. A directive may be general or particular. There is no statutory ability for the Agency to issue a directive; however, the Minister may delegate the Minister's directive-making power to the Agency.

b. Investigators and Supervisors

The Minister has the same authority as the Agency to appoint an investigator. The Minister's authority to appoint an investigator is subject to the same limitations that apply to the Agency (i.e., there is a public interest requirement).

With respect to the appointment of a supervisor, the Minister may do so where it is in the public interest. There is an exclusion for long-term care homes (licensees under the Long-Term Care Homes Act, 2007) and for ICDSs that include a long-term care home (but in respect only of the long-term care home). In the case of a public hospital or an ICDS that includes a public hospital, the appointment of a supervisor must be made by

the LGIC on the advice of the Minister. The provisions with respect to the authority and accountability of a supervisor largely mirror the provisions in the Public Hospitals Act.

Integration

The Bill brings forward the statutory obligation for health service providers, ICDSs and the Agency to, separately and in conjunction with each other, seek opportunities to integrate the services of the health system to provide co-ordinated, effective and efficient services.

The Agency does not have any authority to, on its own initiative, require integration but may effect integration by providing and changing funding and by facilitating and negotiating the integration of entities or services and then issuing an integration decision.

The Minister may require any form of integration by issuing an integration order.

The provisions under LHSIA that set out both a process and restrictions and limitations on what could be in an integration order or decision have been brought forward.

In addition, the provisions in LHSIA that apply to a voluntary integration, including requiring notice and a waiting period, have also been brought forward; however, the notice is to the Minister (and not the Agency) and the Minister may issue a decision that the voluntary integration not proceed. LHSIA requires the notice of voluntary integration to be given to the LHIN and the LHIN has the authority to order the integration to not proceed.

Other Provisions

Delegation by Agency and by Minister

Unlike the LHINs, which have a number of powers that can not be delegated to employees and that have to be exercised by the full board (including issuing directives, appointing supervisors and issuing integration decisions), the Agency may delegate any of its powers and duties to an employee, except the power to appoint investigators and any other power or duty that may be prescribed by regulation.

The proposed legislation also contains a very broad power permitting the Minister to delegate, in writing, any of the Minister's powers, duties and functions, under the Connecting Care Act, 2019 or any other Act for which the Minister is responsible, except the power to make regulations. The Minister may impose conditions on the delegation. This is in contrast to LHSIA, where the power of devolution of statutory powers and duties to the LHIN is exercised by the LGIC by regulation and does not include the Minister's powers under LHSIA (regulation-making powers and some specific powers were also excluded).

Community Engagement

The Agency, ICDS and health service providers are required to establish mechanisms to engage with patients, families, caregivers, health sector employees and others as

part of their operational and planning processes. The Agency is required to engage prescribed Indigenous health planning entities and prescribed French language health planning entities as well as the Minister's Patient and Family Advisory Council.

Definition of Health Service Providers

The definition of health service provider now includes an independent health facility but is otherwise similar to that in LHSIA; however, the specific exclusion of physicians, dentists, chiropodists and optometrists has not been brought forward. This would enable such individuals to be added to the definition by regulation without requiring an amendment to the legislation. There are provisions of the Bill that will apply to entities that are neither health service providers nor ICDSs but that provide a non-health service that supports the provision of health care. Such entities are included in the provisions relating to funding agreements, directives, information and reports, audits and reviews and integration decisions.

Definition of Public Interest

There are various actions of either the Agency or Minister that may only be taken where it is in the public interest to do so. The definition of public interest is materially the same as that in LHSIA and the Public Hospitals Act.

Regulations

With respect to making regulations under the Connecting Care Act, 2019 there is no requirement for prior consultation as is now required in LHSIA.

Amendments to other Acts

The Bill amends a number of other Acts. Many of these amendments are consequential. In total 29 Acts are impacted. There are no material amendments to the Public Hospitals Act.

In addition, there are amendments to the Ministry of Health and Long-Term Care Act to establish an Indigenous health council and a French language health service council.

Summary

The main features of the proposed new Act and its impact on the delivery of health care in Ontario can be summarized as follows:

- A new province-wide agency is established to take on many of the functions of LHINs particularly in respect of funding and exercising oversight of health service providers.
- The Agency will also take over a number of provincial agencies that currently play a role in the healthcare system.
- More powers are given to the Minister, in particular, with respect to integration.
- New health delivery organizations (ICDSs), which offer integrated patient-focused services are enabled. ICDSs will be treated as entities particularly in respect of funding. No form of legal or governance structure is prescribed.

By

Anne C. Corbett, Lydia Wakulowsky, Henry Ngan

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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